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Letter dated 31 July 2002 from the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism addressed to the President of the Security Council

I write with reference to my letter of 3 May 2002 (S/2002/523).

The Counter-Terrorism Committee has received the attached supplementary report from Israel, submitted pursuant to paragraph 6 of resolution 1373 (2001) (see annex).

I would be grateful if you could arrange for the present letter and its annex to be circulated as a document of the Security Council.

(*Signed*) Jeremy **Greenstock**
Chairman
Security Council Committee established pursuant to
resolution 1373 (2001) concerning counter-terrorism

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Annex

Letter dated 24 July 2002 from the Chargé d'affaires of the Permanent Mission of Israel to the United Nations addresssed to the Chairman of the Security Council Committee established pursuant to resolution 1373 (2001) concerning counter-terrorism

In response to your letter dated 1 May 2002 (S/AC.40/2002/MS/OC.69), I have the honour to attach herewith a further report of the Government of Israel prepared in response to the preliminary questions/comments posed by the Counter-Terrorism Committee (see enclosure).

(*Signed*) Aaron **Jacob**
Ambassador
Chargé d'affaires a.i.

Enclosure

State of Israel

Response to the supplementary questionnaire on implementation of resolution 1373 (2001)

24 July 2001

Sub-paragraph 1 (a)

Comment/Question

In view of the efforts of the international community to stop abuse of informal banking networks, please comment on how this is, or will be reflected in Israeli legislation.

Reply

The Israel Knesset recently passed an amendment to the *Prohibition on Money Laundering Law (2000)* that places providers of currency services under the supervision of the Ministry of Finance. In accordance with the amended Law, a Registrar of Currency Services was recently established. This Registrar is required to keep a register of the providers of currency services. The Registrar is to supervise and inspect the activity of the providers of currency services, with a view to regulating their activities.

The amended *Prohibition on Money Laundering Law (2000)* defines the provider of currency services as "any person whose occupation is the provision of one of the services ennumerated below, even if not as his exclusive occupation...

- conversion of the currency of one state into the currency of another state
- sale or redemption of travellers' cheques in any type of currency
- receipt of financial assets in one state in return for making available financial assets in another state; for the purpose of this section "financial assets" means cash, travellers' cheques, cheques, bills of exchange, promissory notes, negotiable securities, credit or monetary deposits.
- the exchange of bank notes
- discounting of cheques, bill of exchange, and promissory notes."

The *Prohibition on Money (Requirements Regarding Identification, Reporting and Record-Keeping by providers of Currency services (2002)* requires providers of currency services to report to the Israel Money Laundering Prohibition authority (IMPA) "the activities of a service applicant which appear to him to be unusual."

While the *Prohibition on Money Laundering Law* does not contain a specific provision which mandates financial institutions to report to the IMPA when they suspect that funds are related to terrorism, the *Prohibition on Money Laundering Orders* (which are directed to the different financial institutions) mandate the report of any transaction which seems to the financial institution to be unusual. This includes unusual transactions which seem to be linked to, related to or used for terrorism. (It should be noted that the term "unusual transaction" is used in the Orders so that the Israeli Money Laundering Prohibition Authority will receive reports even when the financial institution is unable to link the unusual transaction with money laundering).

Comment/Question

Are natural or legal persons other than banks (e.g. attorneys, notaries) required to report suspicious transactions to the public authorities? If so, what penalties apply to persons who omit to report, either willfully or by negligence?

Reply

The Third Schedule of the *Prohibition on Money Laundering Law (2000)* lists additional entities to whom the obligations imposed on providers of financial services apply. These entities include: Banking corporations, members of the stock exchange, portfolio managers, insurers and insurance agents, provident funds and companies managing a provident fund, providers of currency services and the postal bank.

Section 14 of the law states that where any of these entities breaches an obligation imposed upon it, a financial sanction at a rate of up to 1,500,000 NIS (approximately 300,000 US$) may be imposed upon it.

A copy of this law was provided in translation as an annex to Israel's original report. Further copies can be provided upon request.

Sub-paragraph 1 (b)

Comment/Question

The CTC notes that Israel has signed the International Convention for the Suppression of the Financing of Terrorism. Does it intend to introduce amendments to the *Prevention of Terrorism Ordinance (1948)*, the *Penal Law (1977)* or to *Defence Regulations (State of Emergency) (1945)* in order to implement sub-paragraph 1 (b) of the Resolution?

Reply

With regard to these three laws, existing Israeli legislation provides an adequate basis for implementing the provisions of this sub-paragraph.

It should be noted that Israel reviews its legislation concerning terrorist organizations on a continous basis, as part of its efforts to increase effectiveness in the fight against terror.

Sub-paragraph 1 (c)

Comment/Question

Please explain how Israel gives effect to sub-paragraph 1 (c) of the Resolution with respect to funds, financial assets or economic resources which are not connected to money-laundering activities, but derive from lawful sources or activities.

Reply

In its original report Israel cited the following sources of authority for freezing or confiscating assets of terrorist organizations:

Section 5 of the *Prevention of Terrorisn Ordinance(1948)*

Regulation 84(2)(a) of the *Defence Regulations (State of Emergency) (1945)*

Sections 32 and 34 of the *Criminal Procedure Ordinance (Search and Seizure) [New Version] (1969)*

This legislation is also the relevant legislation for funds, financial assets or economic resources which are not connected to money-laundering activities, but derived from lawful sources or activities.

Comment/Question

Please provide copies of the particular provisions of both the *Prohibition on Money Laundering Law (2000)* and the *International Legal Assistance Law (1998)* which allow for enforcement of foreign forfeiture orders.

Reply

Copies of these laws were provided in translation as an annex to Israel's original report. Further copies can be provided upon request.

Comment/Question

Please provide a progress report regarding the addition of terrorist crimes to the list of offences designated in accordance with the *International Legal Assistance Law (1998)*.

Reply

Generally, the *International Legal Assistance Law (1998)* does not contain a list of offences as such. Rather, Article 2 of this Law stipulates the nature of legal assistance without any reference to specific crimes to which the law applies, but rather to certain ways in which the State of Israel and another state may render legal assitance to each other.

The only forms of legal assistance which are limited to specific offences are confiscation and forfeiture of property with regard to drug and money laundering offences. Regulatory action is presently underway to add terrorist offences to the schedule of offences for which confiscation and forfeiture are available.

A copy of this law was provided in translation as an annex to Israel's original report. Further copies can be provided upon request.

Sub-paragraph 1 (d)

Comment/Question

What preventive controls and surveillance measures has Israel put in place to ensure that funds intended for the financing of terrorism are not transferred through charitable, religious or cultural organisation?

Reply

In accordance with *Defence Regulations (State of Emergency) (1945)*, non-profit organisations are subject to the same prohibitions and obligations as other individuals and organizations in Israel, concerning the funding of terrorist activities and the reporting to the security authorities on terrorist organization assets in their possession. In addition to the ongoing actions of the security and police forces in preventing terrorist funding by non-profit institutions, the latter are also under the supervision of the Registrar of Associations of the Interior Ministry. As such, they are required to submit regular reports on various aspects of their activities to the Registrar, as well as to other bodies, such as the tax authorities. The supervising authorities can initiate investigations of non-profit organization business; involvement in funding of terrorist activities constitutes grounds for closing them down and dismantling them.

Sub-paragraph 2 (a)

Comment/Question

Please outline the legal provisions prohibiting the acquisition of firearms without a license, in particular at the time of purchase.

Reply

The relevant legislation regarding the supply of weapons is the *Firearms Law (1949)*. Article 6 of this Law stipulates that a permit is needed when buying a firearm or aquiring it in any other way.

A copy of this law was provided in translation as an annex to Israel's original report. Further copies can be provided upon request.

Comment/Question

Please outline the legal provisions prohibiting the trafficking and brokering of weapons to terrorists and their organizations.

Reply

The relevant provisions are to be found in the *Firearms Law (1949)*, the *Explosive Material Law (1954)*, the *Defence Regulations (State of Emergency) (1945)* and in the Israeli Government's decisions *411 (1974)* and *190(b) (1999)*.

Copies of the above mentioned laws were provided in translation as an annex to Israel's original report. Further copies can be provided upon request.

Comment/Question

Please outline measures, both legislative and practical, preventing entities and individuals from collecting funds or soliciting other forms of support for terrorist activities to be carried out inside or outside Israel, including, in particular:

- The carrying out, within or from Israel, of collecting of funds and soliciting of other forms of support from other countries: and
- Deceptive activities such as recruitment based on a representation to the recruit that the purpose of the recruitment is one (e.g. teaching) different from the true purpose and collection of funds through front organizations.

Reply

Under Israeli law, collecting money for terrorist activity is a criminal offence, irrespective of whether the terrorist activity is carried out inside or outside Israel. Raising funds or accepting contributions under false pretenses constitutes not only the crime of involvement in terrorist activity but also of receiving something through fraudulent means. Actions of the security services and Israel Police against the recruiting of individuals and funds for terrorist purposes include prevention of such activities, closing the institutions engaged in these activities, and prosecution of the individuals involved.

The *Prevention of Terrorism Ordinance (1948)*, the *Penal Law (1977)* and the *Defence Regulations (State of Emergency) (1945)* are the laws in which the provisions to this effect are to be found. Copies of these laws were provided in translation as an annex to Israel's original report. Further copies can be provided upon request.

Sub-paragraph 2 (c)

Comment/Question

Please outline the legal provisions for excluding or expelling terrorists from Israeli territory.

Reply

The *Entry into Israel Law (1952)* is the main law dealing with entry and dwelling in Israel.

An amendment to this law, which came into force in November 2001, stipulates the terms and procedures for the detention of those who have entered into or are staying in Israel illegally ('illegal aliens'). In accordance with the law, illegal aliens may be detained only after the issuance of an appropriate order from immigration authorities and after the illegal alien has had prior opportunity to state his claims before the issuing authority. In those cases where a hearing cannot be conducted before the issuance of the order, it must be held no more than 24 hours from the beginning of detention. Where a detention order has been issued, the illegal alien shall be informed of his rights including the right, should he wish it, to notify someone close, a lawyer and his Embassy/Consulate.

The immigration authorities may release an illegal alien, inter alia, if their status in Israel was incurred erroneously, due to medical or other humanitarian reasons. Immigration authorities may refuse to release from detention an illegal alien considered to present a danger to national security, public security or health.

The amendment also establishes a tribunal for the judicial supervision of decisions taken by immigration authorities with regard to the detention of illegal aliens. Illegal aliens are to be brought before the tribunal no later than 14 days after the beginning of their detention. Illegal aliens may petition the tribunal at any time, and may request a re-consideration of their case where there has been a change in circumstances. Additionally, they have a right to be present at all hearings concerning their case and to be represented without fee by a representative who is not a lawyer.

Sub-paragraph 2 (d)

Comment/Question

Please explain whether Israeli law prohibits the commission of the act described in this sub-paragraph in cirumstances where there is no incitement to subversion nor incitement to bring down, by force or violence, the lawful government of a foreign country, nor an attempt to destroy the political order of a foreign State.

Reply

The actions described in this sub-paragraph may be prohibited in Israel, even when they are not directed against the State (but rather against its citizens). The relevant legislation in this regard is:

- The *Prevention of Terrorism Ordinance (1948)* – when the actions are carried out within the framework of an organization
- Regular criminal legislation that prohibits actions of this kind in terms of the perpetration of or complicity in the execution of crimes such as murder, the perpetration of attacks, abduction, etc.

Sub-paragraph 2 (e)

Comment/Question

Please clarify the meaning of the term "unlawful association" as defined by the Minister of Defence in accordance with Regulation 84 (2) (a), on one hand, and as defined by section 145 of the *Penal Law*, 1977, on the other.

Reply

The definition of "Prohibited Association" in Article 145 of the *Penal Law (1977)* includes organizations operating against governments of foreign states, organizations acting against property belonging to the State or property used in domestic or foreign trade with the State and even organizations that continue to operate after they have been dismantled in accordance with the law. The definition in Regulation 84 of the *Defence Regulations (State of Emergency) (1945)* refers only to the organizations operating against the Israeli Government, its officials and its assets.

Comment/Question

What are the "certain other conditions", mentioned in paragraph (c) of the item on Extraterritorial Jurisdiction, under which the courts of Israel have jurisdiction over a terrorist crime committed elsewhere where the accused is an Israeli resident and the other conditions specified in that paragraph have been met?

In this context, please provide examples of the application of Article 17 of the Israeli Penal Code.

Reply

Article 17 of the *Penal Law (1977)* has yet to be applied, so no examples are currently available. For this reason, there are no "certain other conditions" to speak of as yet, beyond the ones already specified in Israel's original response.

Comment/Question

Please provide a progress report regarding the bill on criminal organizations.

Reply

The bill has been approved by the Committee of Ministers on matters of legislation and will soon be published as a proposed Act to be brought before the Knesset.

Sub-paragraph 2 (f)

Comment/Question

What is the legal timeframe within which a request for judicial assistance in criminal investigations or criminal proceedings relating to the financing or support of terrorist acts is required to be met and how long does it actually take in practice to implement such a request?

Reply

There is no legal timeframe in which a request for legal assistance in criminal investigations or proceedings must be executed. The time factor is usually determined by the urgency of matter, the extent and complexity of the assistance requested, the seriousness of the crimes, and the necessity of acquiring court orders in the case of particular forms of assistance. For these reasons, it is also not possible to talk about an "average" time in which requests are executed. Assistance in matters relating to terrorist crimes, including the funding and financing of these crimes, are given a very high priority and every effort is made to ensure that such requests are executed as quickly as possible.

Comment/Question

As stated in the report, Israel has been a State party to the European Convention on Extradition since 1967. Israel has made the following reservation to this convention: "Israel will not grant extradition of a person charged with an offence unless it is proved in a court in Israel that there is evidence which would be sufficient for committing him to trial for such an offense in Israel." Has this reservation ever been invoked following a request for extradition by another State?

Reply

Israel's reservation to the European Convention on Extradition provides that Israel will only grant extradition of a wanted person for an extraditable offense if evidence is submitted "which would have been sufficient for committing him to trial for such an offense in Israel...". This Reservation is based on the requirement of section 9 of Israel's *Extradition Law (1954)* which provides that a person will only be declared extraditable by the extradition court with respect to any particular offence if "it is proved that the wanted person has been convicted

of an extradition offence in the requesting State, or that there is evidence which would be sufficient for committing him to trial for such an offence in Israel..."

Because this requirement is mandated under Israeli law, a clause or reservation conditioning extradition on the submission of such evidence is contained in all the extradition agreements to which Israel is party and extradition cannot take place unless this evidence has been submitted by the requesting State.

The Israeli courts have interpreted this evidentiary requirement mandated by section 9 to refer to the requirement for the submission of prima facie evidence sufficient to have supported the issuance of an indictment against the suspect. This standard can be generally understood to mean that sufficient evidence should be submitted to have supported a conviction of the suspect were the evidence to be presented, accepted as true and not contradicted at trial.

It is, of course, accepted under the Israeli *Extradition Law* and regulations that evidence submitted on behalf of a request for extradition can be in the form of documentary evidence, and it is almost exclusively the case that evidence in extradition matters is submitted in the form of documentary evidence.

The Israeli courts have emphasized that the purpose of this evidentiary requirement is not, and must not be, to substitute the proceedings of the Israeli extradition court for those of the trial court in the requesting state. The Israeli courts merely assess whether there exists sufficient evidence against the wanted person to warrant bringing him to trial in the requesting state, to determine the question of his guilt or innocence. In this context, while the Israeli extradition court will consider the *sufficiency* of the evidence, it will not generally weigh the *credibility* of the evidence (e.g., whether to believe one witness rather than another). The Israeli courts have considered the assessment of the credibility of the evidence to be the function of the trial court in the Requesting State, following extradition.

In requiring the submission of prima facie evidence, Israeli law follows the general tradition of other common law states. This safeguard is often seen in Israel as a balance to its willingness to extradite its own citizens, unlike the case of most non-common law jurisdictions.

Sub-paragraph 3 (a)

Comment/Question

Please indicate how Israel intends to intensify and accelarate the exchange of operational information, particularly in respect of the use of communication technologies by terrorist groups?

Reply

Israel has already enhanced its cooperation on this issue and will continue to consider ways to do so through existing bilateral mechanisms as well as other mechanisms that may be established in the future.

Sub-paragraph 3 (c)

Comment/Question

With which countries has Israel entered into bilateral treaties on extradition and mutual legal assistance?

Reply

Bilateral treaties on extradition have been signed between Israel and:

- The United States of America;
- Canada;

- South Africa;
- Swaziland;
- Australia; and
- Fiji.

Bilateral treaties on mutual legal assitance have been signed between Israel and:

- Australia;
- The United States of America; and
- Canada.

It should be noted that Israel is Party to the *European Convention on Extradition* and the *European Convention on Mutual Assitance in Criminal Matters* which regulates Israel's relations with over 40 states regarding extradition and mutual assistance in criminal matters.

Sub-paragraph 3 (d)

Comment/Question

The CTC would welcome a report, in relation to the relevant international conventions and protocols relating to terrorism, on the progress made by Israel in :

- Becoming a party to the instruments to which it is not yet a party: and
- Enacting legislation, and making other necessary arrangements, to implement the instruments to which it has bercome a party.

Reply

Several updates can be made to Israel's initial report with regard to the status of international conventions relating to terrorism:

- *Convention on the Physical Protection of Nuclear Materials, 1980* – Israel has become Party to the Convention.
- *International Convention for the Suppression of Terrorist Bombings, 1997* – the process towards ratification of the Convention is in its advanced stages.
- *International Convention for the Suppression of the Financing of Terrorism, 1999* - the process towards ratification of the Convention is in its advanced stages.

Sub-paragraph 3 (e)

Comment/Question

Have the crimes set forth in the relevant international conventions relating to terrorism been included as extraditable offencess in the bilateral extradition treaties to which Israel is party?

Reply

Most of Israel's extradition relations under extradition treaties are not limited by a schedule of specific extraditable offences. Thus, for example, the *European Convention on Extradition* which regulates Isreal's extradition relations with over 40 states declares as extraditable every offence punishable under the laws of the requesting Party and of the requested Party by incarceration for a maximum period of at least one year.

Several bilateral treaties to which Israel is Party do contain a schedule of offences. These do not usually relate to terror, but include offences such as murder, attempted murder, conspiracy to comit murder, which cover many terrorist offences.

Israel is attempting to negotiate ammendments to such treaties, which will explicitly make serious terrorist offences extraditable.

Sub-paragraph 3 (f)

Comment/Question

Please provide a progress report on the refugee legislation under consideration and specify which measures will be put in place to prevent refugee status from being abused.

Reply

There is no legislation in Israel that deals directly with refugees. Recently, the issue of the determination of refugee status under the *Geneva Convention of 1951* regarding the Status of Refugees, has undergone significant changes in Israel. The result of these changes is the establishment of a comprehensive inter-ministerial body for the assessment of applications for asylum and the granting of status to those asylum seekers recognized as refugees. The National Status Granting Body (hereinafter: 'NSGB') serves as an advisory committee to the Minister of Interior, who has authority under the law to determine the status of any person in Israel.

There are four mechanisms for the review and appeal of decisions taken by the NSGB regarding applications for asylum in Israel:

- As the NSGB operates as an advisory committee to the Minister of Interior, all NSGB recommendations are presented to the Minister for his final decision. At this stage, the Minister may uphold the NSGB's recommendations, reject them or return the matter for further consideration.
- Rejected applications for asylum may be brought before the NSGB for re-consideration where circumstances have changed or where new facts or documents have been revealed.
- Applicants having procedural objections pertaining to the work of the committee, may submit their objection to the Minister of Interior.
- Another form of appeal is embodied in the right of any person to submit a petition to the Israeli Supreme Court sitting as the High Court of Justice, if injury has been caused by any governmental authority. As Israeli citizenship is not a requirement for such a petition, this form of judicial supervision is open to asylum seekers. The Court has authority to deal with any petition brought before it, and legal represention is not required.

Sub-paragraph 3 (g)

Comment/Question

Please provide the CTC with a copy of, or provide an internet reference for, the particular provisions of the Extradition Law (1954), as amended in 2001, which ensures that claims of political motivation are not recognised as grounds for refusing requests for the extradition of alleged terrorists, as requested by sub-paragraph 3 (g) of the Resolution.

Reply

A copy of the *Extradition Law (1954)* was provided in translation as an annex to Israel's original report. The relevant provisions are 2B(b)(2) and 2B(b)(5). Further copies can be provided upon request.

Paragraph 4

Comment/Question

Has Israel addressed any of the concerns expressed in paragraph 4 of the Resolution?

Reply

Israel has consistently supported regional and international cooperation aimed at preventing the flow of non-conventional weapons, materials, technology and know-how, as well as the prevention of transnational organised crime, illicit drugs, money laundering and the illegal trafficking of arms.

Israel continues to strengthen its actions to this effect in all of the above mentioned fields.

In this context, Israel is please to inform the Conter Terrorism Committee that as of 22 February 2002 the State of Israel is Party to the *Convention of the Physical Protection of Nuclear Materials*.